IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1045 of 1988

with

CRIMINAL APPEAL No 1033 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

VALLABH JIVRAJBHAI & ORS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1045 of 1988
Mr. P.M. Thakkar, Advocate, for the Appellants
Mr. S.R. Divetia, Addl. Public Prosecutor, for the Respondent-State

2. Criminal AppealNo 1033 of 1988
S.R. Divetia, Addl. Public Prosecutor, for the Appellant
MR KJ SHETHNA, Advocate, for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 05/02/97

ORAL JUDGEMENT

(per Gokhale, J.)

Both these appeals are filed against the judgment and order dated 29th October 1988 passed by the learned Additional Sessions Judge at Bhavnagar in Sessions Case No. 54 of 1987. The first one is by the accused-convicts and the second one is by the State for enhancement. Five appellants in Appeal No. 1045 of 1988 were tried along with five others in the said case. The present appellants were accused Nos. 1, 2, 3, 4, 5 and 9 respectively in the sessions case. The other accused were acquitted at the end of the trial. The appellants herein were convicted under sec. 302 read with sec. 149 of the IPC as well as under sec. 324 read with sec. 149 IPC. The accused were awarded rigorous imprisonment for life for the first offence and for the second offence R.I. for six months and to pay a fine of Rs. 500 each in default R.I. for 3 months. All these sentences were directed to run concurrently.

2. The controversy leading to the trial is as follows:- On 7th February 1987 at about 3 p.m. the deceased one Haribhai, along with his relative one Raghav Jadav (who is the complainant in the case) were returning to the village Zinzuda on a motorcycle. This village falls in Taluka Savarkundla of District Bhavnagar. The charge against the accused is that at that time they were standing at the entrance of the village ready with weapons such as iron pipes, axes and sticks as described in the charge (Ex. 3) at page 11 of the compilation and by using those weapons they caused the death of Haribhai. The complainant is also said to have been injured in the incident leading to the said charge. In view of the injuries caused to Haribhai, he died on the spot. All the accused were charged under sec. 302 read with sec. 149 of the IPC. Alternatively and additionally, the accused No.1 was separately charged under sec. 302 and accused No. 9 under sec. 325 of the IPC for causing injury to the complainant Raghav Jadav. The motive behind the incident is alleged to be that the deceased Haribhai was said to be working in Surat in the diamond trade in connection with which the accused had some dispute with him and since they all hailed from the same village, they chose the day and time for settling the same. The defence of the accused is that the injuries leading to the death of Haribhai were such as could be caused by a fall from the motorcycle when the same is

moving.

3. From the record of the case it is clear that, whereas in the FIR the complainant mentioned that 7 persons were standing on each side of the road when the incident took place, when he deposed in the court as P.W. No. 2 (at Ex. 22) he has stated that there were only five persons on either of the sides. He could not explain as to why the number was increased earlier. In the examination-in-chief itself he has stated that in the complaint he had wrongly given the name of one Govindbhai as an accused when in fact he is a paralytic patient as disclosed in the cross-examination. Out of the ten accused who were charged, the complainant has stated in para 8 of his cross-examination that he only knew the accused Nos. 1, 9 and 4 by their names. They are appellant Nos. 1, 6 and 4 respectively herein. Thereafter he has stated that he knew accused Nos. 2 and 10 by face. He did not know any of the other accused earlier. He also did not turn up at the time of identification parade.

4. Thus, from amongst the accused who are presently challenging the impugned judgment and order, the complainant knew only appellant Nos. 1 and 4 by name and accused No. 2 by face. Now, when we look to the injuries which have been caused to the deceased, it can be seen from the deposition of the doctor who performed post-mortem (Dr. Ramjibhai Parghi) that it was injury No. 1 which was the fatal one. Injury No.1 is described as "C.L.W. right perietal region of the head vertically size 3" x 1/2" scalp deep and bleeding was present". Dr. Parghi has deposed that the cause of death was shock due to the head injury. Dr. Parghi (P.W. No. 1) who is examined at Ex. 18 has deposed that all the injuries were such that could be caused by a hard and blunt substance like sticks. The doctor was shown the muddamal dharia, spear, pipes and sticks and axe and thereafter has stated that the injuries described in Col. 17 of the post-mortem note were possible by these weapons if they were used as sticks. In these circumstances, when the accused No.1 was carrying a spear and accused No.9 a dharia, it is not possible to accept that they used them as sticks when they wanted to settle the score. The entire deposition of the complainant is such that it does not inspire confidence. From his deposition as read along with the medical evidence, all that is seen is that appellant No.1 and 9 were known to him and he knew accused No.2 by face. But from amongst them it is very difficult to say as to who caused the fatal injury. Besides, on a question from the court, Dr. Parghi has

clearly stated that if a person is moving on a vehicle and if he falls down, all the injuries are possible by the fall. In these circumstances, all the appellants will have to be given the benefit of doubt and it will have to be held that the charges against them have not been proved.

5. In the circumstances, the appellants succeed. The impugned judgment and order passed by the learned Additonal Sessions Judge of Bhavnagar in Sessions Case No. 54/87 is set aside. The accused are hereby directed to be set at liberty forthwith if not required in any other case. The fine, if any, paid by the accused is ordered to be refunded.

Appeal No. 1033/88 is filed by the State against the acquittal of the other accused. In view of the reasons given above, there is no occasion to interfere with the acquittal order. This appeal is accordingly dismissed.

(Hari)